News

The Department of Ecology is in the midst of several activities that have statewide significance. They include issuance of a Proposed Rule to effect the Farmhouse Floodway law that was passed in 1999, consultation with the Office of Community Development on promulgation of a Frequently Flooded Areas section of a new Model Critical Area Ordinance, and preparation for implementing FEMA's Map Modernization infusion of study funds. We are once again fully staffed on our Flood Team, having replaced Dave Burdick who left our Northwest Regional Office in July 2001. Our Team consists of the State Floodplain Management Coordinator, two Headquarters staff who are focused on floodplain mapping and three field people located in Lacey, Bellevue and Spokane.

Farmhouse Floodway Law.

The Legislature in 1999 enacted an exception to the residential floodway prohibition that has been in State law since 1969. The action was taken in response to a challenge to the 1969 law by Snohomish County. The County had a practice of allowing floodway farmhouses outright, based on their interpretation of earlier letters from Ecology. When FEMA uncovered some of this activity during a Community Assistance Visit, Ecology was asked for a current interpretation of the residential floodway prohibition, the results of which were unfavorable to the County. That was in late-1998, and spurred the Legislative activity, which culminated in the change in the law in 1999.

The law took effect immediately, and stated that the floodway prohibition "does not apply to existing farmhouses in designated floodways" that meet certain provisions. The law also does not apply "to substantially damaged residential structures other than farmhouses that meet the depth and velocity and erosion analysis" that is defined in the Proposed Rule. The referenced provisions that have to be met are in the RCW for farmhouses, and are basically the same in the WAC for residences other than farmhouses, per the Proposed Rule. In summary, the key provisions here require that:

> (a) the structure is a replacement for an existing structure;
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> (b) there is no potential building site for a replacement structure on the same property outside the floodway;
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> (c) repairs, reconstruction or improvement cannot increase the total square footage of the existing encroachment; and (4) the structure must be elevated at least one foot above the 100-year flood level. Agricultural structures are defined as those located on agricultural lands of long-term commercial significance under RCW 36.70A.170.

What is new in the Proposed Rule are the regulations that authorize Ecology to assess the risk for substantially damaged residential structures other than farmhouses that are located in the floodway. The rule, first, makes it clear that Ecology will only act at the request of a local government. Absent such a request, no repair or replacement is allowed. Such requests can only

be for substantially damaged residential structures, not for substantial improvements of a residence that has not been damaged (here the basic law applies, i.e., there can be no substantial improvements of non-farm residences in the floodway). If Ecology does receive a request, the recommendation to repair or replace a substantially damaged residence will be based on flood characteristics at the site, including the following:

- Flood depths cannot exceed more than three (3) feet;
- Flood velocities cannot exceed more than three (3) feet per second; and
- There must be no evidence of flood-related erosion at the site.

These are in addition to the key provisions mentioned above. Note that the depth and velocity criteria are absolute and cannot be used in combination; e.g., if there were a site that had a depth of 1 foot and velocity of 5 feet per second, that would not be acceptable because the velocity exceeds the 3 feet per second criteria, even thought the combination does not exceed 6.

The comment period for the Proposed Rule ended on April 25, 2002 and it has now been scheduled for final adoption. Two Public Hearings were held on April 17 in Everett and April 18 in Yakima. Attendance was low at both Hearings. Comments that were received indicated that some felt the law should be stronger, i.e., no exceptions should be allowed, while others felt the law did not go far enough in loosening the floodway prohibition; the net sum was a neutralized position. Ecology has taken all comments into consideration before issuing the Final Rule.

Frequently Flooded Areas (FFA) Section of the CAO.

The Office of Community Development (OCD) has developed a Model Critical Area Ordinance which addresses all State-defined critical areas including Frequently Flooded Areas. Ecology has been involved in reviewing the FFA section that OCD and their consultants put together.

Basically, the Draft FFA Section presents a change in what the FEMA-State Model Flood Damage Prevention Ordinance has looked like for the last 25 years. While the content is the same because laws and other authorities have not changed, the format looks quite different. FFAs are placed into the same basic format that is used for other critical areas. Wording that is used in the FFA Section is not always the same as in the FEMA-State Model, but the agencies have worked together to be sure that meanings are the same so that adoption of this Section will comply with FEMA and State requirements.

There is a reference in the OCD Model on its applicability, which states that: “The Model Critical Area Ordinance is not mandatory for jurisdictions to adopt, however, all jurisdictions are required to adopt critical area regulations consistent with the Growth Management Act.” In the FFA Section, reference is made to the FEMA-State Model Ordinance.

Workshops on the proposed Model Critical Area Ordinance were conducted by OCD in May in four locations around the State. The workshops were designed to assist local governments with

understanding their role in designating and protecting critical areas' functions and values. They were day-long sessions that included discussions of the Frequently Flooded Areas Section.

FEMA Map Modernization

FEMA started its Map Modernization initiative in 1997. It consists of some 36 elements that are designed to change the way that maps are prepared, distributed and updated. Goals include making all FEMA maps available on the Internet, and updating flood data for about 3,500 communities nationwide, updating planimetric features (but not flood data) for about 3,300 communities, and converting all maps to the digital format.

These goals were praiseworthy in that FEMA recognized problems with their maps and prepared a comprehensive program to overcome the problems. While some aspects of this program were able to be accomplished without extra funding, unfortunately there were no specific funds provided by Congress that would get at most of the key issues – until this year. FEMA anticipates an infusion of $300 million to modernize its inventory of maps in Federal Fiscal Year 2003, which begins October 1, 2002. This may translate into a figure of around $10 million for the four Northwest States covered by the Seattle Regional Office of FEMA. The $10 million compares to around $500,000 that the Region has averaged over the last 5 years.

FEMA has a responsibility to map the Nation's floodplains; however, the maps are costly and have been funded strictly out of flood insurance premiums in the past. This mechanism was good in that FEMA was able to show that the National Flood Insurance Program was self-sufficient, not reliant on tax dollars; however it did not produce amounts needed to update the maps, and the $300 million would be in the form of a special appropriation from Congress using general fund dollars. In an effort to stretch the funds, FEMA has encouraged working through a Cooperating Technical Partner and Cooperating Technical State concept. This involves a signed agreement between FEMA and the Partner (any community) or the State that specifies who will do what, and how the partner will contribute to the mapping effort, including cost sharing in many cases.

Washington is a Cooperating Technical State, and Ecology is presenting a plan to FEMA that will specify how the State can manage all or part of the Statewide Flood Hazard Mapping Program. This could result in operation of all or part of the mapping effort by the State, vs. operation of all mapping in the past that was done strictly by FEMA. In a State-run program, there would be more flexibility to meet specific State-identified mapping problems, though studies will still have to meet FEMA's Guidelines and Specifications.

Regardless of how the Program is eventually managed, this is an excellent time for communities to make their mapping needs known. It is expected that the $300 million will be the first installment reflecting Congress' desire to see a comprehensive update to the Nation's flood mapping inventory. Whether the flood information is out of date (the engineering hydrology and hydraulics) or whether the maps just need to be brought up to date (to reflect new subdivisions, streets, etc.), the Map Modernization Program is designed to address all of these problems.